Remarks

Original claims 1 and 11 have been amended and claims 2-10, and 11-35 have been maintained in their original form. Reconsideration of this application in light of the above amendments and the following remarks is requested.

Rejections under 35 U.S.C. § 102

Claims 1-10

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,812,545 to Liebowitz, et al. ("Liebowitz"). The PTO provides in MPEP § 2131 that to anticipate a claim, the reference must teach every element of the claim. Applicant submits that this reference does not anticipate the subject matter of claim 1, as amended, under 35 U.S.C. § 102(b).

Claim 1, as amended, recites:

> A method of performing traffic volume accounting in a mobile telecommunication system, the method comprising the steps of: reading a service marking included in a first packet received by a first node of the telecommunication system; and performing a first increment to a counter in a first traffic volume container of a call detail record, the first increment indicative of a volume of data in the first packet, the first traffic volume container dedicated to a service associated with the service marking; and *applying at least one billing rate, based on the service marking, to the counter in the first traffic volume container.*" (Emphasis added).

Support for the added limitations may be found, for example, in the specification at page 12, lines 3-27. This is neither taught, nor suggested by the cited reference. Liebowitz fails to teach a first billing rate that is based on a service marking. Liebowitz actually states that, "[t]he user pays a CIR service fee *based on the data rate*," (emphasis added), and that "[t]he user is billed a *fixed price* for the CIR," (emphasis added). Liebowitz, col. 17,

lines 49-61. Therefore Liebowitz fails to teach or suggest every element of claim 1, and claim 1 should be allowable over Liebowitz.

Dependent claims 2-10 depend from and further limit independent claim 1 and should also be allowable over Liebowitz, whether alone or in combination with U.S. Patent No. 6,707,915 to Jobst, et al.

Claims 19-24

Claim 19 was also rejected under 35 U.S.C. § 102(b) as being anticipated by Liebowitz. As stated, to anticipate a claim, the reference must teach every element of the claim. Applicant submits that Liebowitz neither teaches nor suggests every element of claim 19.

Claim 19 recites:

> A node of a network for performing billing procedures on call detail records, the node comprising: a processing unit; a memory unit operable to store a billing algorithm executable by the processing unit; and an interface to a network medium operable to receive a call detail record thereon, *the billing algorithm operable to generate a tariff dependent on contents of a traffic volume container included in the call detail record, the traffic volume container having an identifier of an originator of network traffic associated therewith and maintained in the call detail record, the tariff further dependent on the identifier.* (Emphasis added.)

This is neither taught, nor suggested by the cited reference. Liebowitz fails to teach a tariff that is dependent on an identifier of an originator. Liebowitz actually states that, "[t]he user pays a CIR service fee *based on the data rate*," (emphasis added), and that "[t]he user is billed a *fixed price* for the CIR," (emphasis added). Liebowitz, col. 17, lines 49-61. Therefore Liebowitz fails to teach or suggest every element of claim 19, and claim 19

should be allowable over Liebowitz.

Claims 20-24 depend from and further limit claim 19, and therefore are allowable over Liebowitz, whether alone or in combination with U.S. Patent No. 5,579,379 to D'Amico, et al.

Claims 25-35

Claim 25 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,579,379 to D'Amico, et al. ("D'Amico"). As stated, to anticipate a claim, a reference must teach every element of the claim. Claim 25 recites, "A method of levying a tariff for data delivered from an originator to a terminal device in a telecommunication network, comprising: *reading an identifier in a packet*; determining a correspondence with the identifier and the originator of the data; and levying the tariff against the originator." (Emphasis added.) D'Amico fails to teach each element as recited above. For example, rather than, "reading an identifier in a packet," D'Amico teaches that, "[i]f the called subscriber is using the CPP feature, *caller data is analyzed to determine if the caller is on a list* of those individuals not required by the mobile subscriber to pay cellular charges," col. 8, lines 59-62, (emphasis added). Because, D'Amico fails to teach or suggest each element of claim 25, claim 25 should be allowable over D'Amico.

Regarding claims 26-29, it appears that the Examiner has failed to make a proper rejection by providing a teaching or suggestion of each of the claim elements within claims 26-29. However, as claims 26-35 depend from and further limit independent claim 25, all of claims 26-35 should be allowable over D'Amico, whether alone or in combination with U.S. Patent No. 5,812,545 to Liebowitz, et al.

Rejections Under 35 U.S.C. §103

Claims 11-18

Claim 11 was rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,812,545 to Liebowitz, et al. ("Liebowitz"). Applicant respectfully traverses this rejection on the grounds that this reference is defective in establishing a prima facie case of obviousness with respect to claim 11. The PTO recognizes in MPEP § 2142 that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness. It is submitted that, in the present case, the examiner cannot factually support a *prima facie* case of obviousness.

Initially, the references do not teach the claimed subject matter. Claim 11, as amended, recites in part, "the first service node [is] operable to provide at least one billing rate to the counter in the first traffic volume container, the first billing rate [is] associated with the first service marking." However, Liebowitz fails to teach or suggest this claim element. In fact, Liebowitz teaches away from claim 11 by teaching that, "[t]he user pays a CIR service fee *based on the data rate*," (emphasis added), and that "[t]he user is billed a *fixed price* for the CIR," (emphasis added). Liebowitz, col. 17, lines 49-61. Therefore the teachings of Liebowitz stand in contrast to the elements of claim 11, which require that a first billing rate be associated with a first service marking.

Dependent claims 12-18 depend from and further limit independent claim 11. Therefore claims 12-18 should also be allowable over Liebowitz, whether alone or in combination with D'Amico and/or Jobst.

Conclusion

It is clear from all of the foregoing that independent claims 1, 11, 19, and 25 are in condition for allowance. Dependent claims 2-10, 12-18, 20-24, and 26-35 depend from and further limit the independent claims and therefore are allowable as well.

An early formal notice of allowance is requested.

Respectfully submitted,

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